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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/513,964 | 02/28/2000 | Stephan Meyers | 4925-36 | 9051 |

7590 11/03/2005

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| EXAMINER | |
|---|---|
| LONSBERRY, HUNTER B | |
| **ART UNIT** | **PAPER NUMBER** |
| 2611 | |

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Advisory Action Before the Filing of an Appeal Brief | Application No. 09/513,964 | Applicant(s) MEYERS, STEPHAN | |
|---|---|---|---|
| | Examiner Hunter B. Lonsberry | Art Unit 2611 | |

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 22 September 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

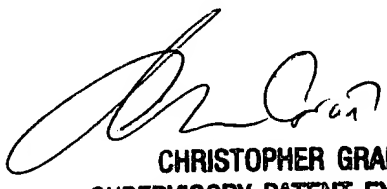
11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

Continued from above:
Applicant argues that Katz does not teach the steps of applying a ranking and adjusting the virtual broadcast as claimed in claim 1, in that the creation of a playlist as disclosed by Katz involves a user picking songs that a user wants in the playlist, that the only thing that can be considered a ranking in Katz is the order of the playlist. Even if the order of the playlist is considered the ranking, this type of ordering is only performed during the creation of the playlist. Katz fails to teach that the device adjust the playlist in response to a user ranking. Further the user selects the playlist, this means the user selects the order, rather than the broadcast device adjusting the virtual broadcast in response to a ranking. (Response page 14-15).

Regarding applicant's argument, Claim 1, merely requires that a ranking is apply by a user using the device, to at least one of the songs in the virtual broadcast, and the virtual broadcast devices adjusts the virtual broadcast according with the user ranking. The examiner agrees with applicant that the creation of a playlist is a ranking, as the user determines the order in which content is to be played out, the content the user desires to enjoy first is played out first. The user determines the order, and as the content is not physical content, it is the computer device within Katz that adjusts the playing order, that is, it is the computing device, which implements the ranking by the user. Thus Katz, in combination with Abecassis, Musicmatch, Tracton and Segal, which teaches each and every element of claim 1.

Applicant argues that Logan does not teach the step of generating an updated virtual television broadcast that includes the additional new story as required in claims 20,23 and 40, rather Logan teaches that the user's preferences and selections are passed to the client player for inclusion in the next download request. (Response page 16)

Regarding applicant's argument, claims 20, 23, and 40 merely require that an updated or revised broadcast is generated. The claims are silent as to whether or not this broadcast is the same broadcast, or a newly created broadcast, which includes both the existing stories as well as newly added content. As Logan does teach designating new content to be added to the next instance of the broadcast, Logan, in combination with the other references of record teaches each and every element of claims 10, 23 and 40.



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